IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Crl.Rev.Pet.No. 691 of 2001(A)

CRA.199/1999 of V ADDL.SESSIONS COURT, ERNAKULAM
ST.1070/1992 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM
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REVN. PETITIONER: APPELLANT/ ACCUSED

VARGHESE VARKEY, PALLIPPARAMBIL,
FLAT NO.FF 6-A-26
VASANTH NAGAR, PALARIVATTOM, KOCHI 25.

BY ADV. SRI.RAJA VIJAYA RAGHAVAN

RESPONDENTS: RESPONDENTS / COMPLAINANT & STATE
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1. **K.K.RAJAPPAN, BEN ELECTRONICS**
   PARAMARA BUILDINGS, KOCHI 18.

2. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.C.C.THOMAS
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/08/2007, ALONG WITH CRMC NO. 7139 OF 2001 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.691/2001

ORDER ON CRL.MP. NO.3312/2001 IN CRL.RP. 691/2001

DISMISSED

13.08.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

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CRL.R.P.NO.691 OF 2001 &

CRL.M.C. NO. 7139 OF 2001

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DATED THIS THE 13th AUGUST 2007

ORDER

Crl.M.C.No.7139/2001 is filed by the complainant in S.T.No.1070/1992 seeking enhancement of the sentence imposed with respect to the offence under Section 138 of the Negotiable Instruments Act. Cl.R.P.No.691/2001 is filed by the accused in S.T.No.1070/1992 seeking to set aside the order of conviction. The accused/revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to pay a fine of Rs.15,000/- and in default to undergo simple imprisonment for two months. If the fine amount is realised, an amount of Rs.12,000/- is ordered to be paid to the complainant.

2. The case of the prosecution is that a sum of Rs.12,000/- was borrowed by the accused and towards discharge the above liability, the impugned cheque was issued which when presented got dishonoured for want of funds in the account of the accused. The defence case is that the cheque was stealthily removed by the

complainant when it was kept in the shop of the complainant.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 3 and Exts.P1 to P7 and the defence examined Dws.1 to 4 and got marked Exts.D1 to D5 . PW1 is the complainant himself and Pws.2 and 3 are the Bank Managers. Ext.P7 extract of the account of the accused would indicate that only a sum of R.60/- was the balance amount in the account. DW2, the handwriting expert of the F.S.L.was examined to prove Ext.D5 report wherein it is mentioned that No.5 in the date 5-6-1990 appeared to be written after rubbing of the existing letter and the name of the payee appeared to be written by another person and not by the person who wrote the amount and signed in the cheque. Rs.12,000/- in words and figures are seen written. The courts below have concurrently found that the version of the handwriting expert is hardly sufficient to rebut the statutory presumptions; and rightly so. The version that the cheque was removed without the knowledge of the accused and that the same was presented by the complainant cannot be believed in the absence of proper evidence. The only evidence in this regard is the testimony of Dws. 3 and 4. DW4 is the brother of the accused himself and the evidence of DW3 who is a friend of the accused was found not

credible. In the above circumstances there is no reason to deviate from the finding of the courts below. The conviction is confirmed. The enhancement of the compensation claimed vide Crl.M.C.No.7139/2001 appears just. Hence, the sentence is modified to pay a fine of Rs.15,000/- and in default to undergo simple imprisonment for two months and that the fine amount as such will be paid to the complainant. The Crl. revision petition and the Crl.M.C. are disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.691/2001 &
CRL.M.C.NO. 7139 OF 2001
ORDER

13TH AUGUST 2007